ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 27 OF 1999

BETWEEN:

ZOLA JOYETTE
LEOPALD JOYETE

Plaintiffs

and

CALVERT SAMUEL

Defendant

Appearances:
Mr Samuel Commissiong for the Plaintiff
Ms Zhinga Horne for the Defendant

2000: May 30, 31, June 5, 6, 8

JUDGMENT

[1] MITCHELL, J: This is a dispute between landlord and tenant. The Plaintiffs in this case are the landlords (hereinafter "The Landlords") and the Defendant is the tenant (hereinafter "the Tenant").

[2] The Landlords claim arrears of rent, and compensation for damage done to the building by the Tenant. The amount of rent claimed is $37,500.00; the amount as damage to the building is $3,421.93. The Tenant claims a setoff for money he spent on the building with the agreement of the Landlord. He also counterclaims for damages for breach of the Landlords' covenants. The Landlords replied that there was never any agreement for the Tenant to renovate or add anything to the premises at the cost of the Landlords. The Landlords deny interfering with the Tenant's business.

[3] The court heard evidence from the 2nd Plaintiff and one McVeil Kydd for the Landlords. Giving evidence for the Tenant were Calvert Samuel himself; he was supported by Father Charles Allen, Anglican priest of Bequia; Sylvester Tannis, the chief Administrative Officer for Bequia; Alfred McDowell, an elderly retired builder; Dwight Thompson, a baker employed by the Tenant in Bequia; and Valcina Chambers, the manager and part owner of the Bakery in Bequia of the Tenant.

[4] The facts as I find them are as follows. The Landlords and the Tenant on 1st March 1996 entered into a 10-year lease of the business premises at O'Car Reform in the island of Bequia in the Grenadines. Extracting from the relevant clauses of the lease, which was put in evidence by consent, I find that the term began on 1 March 1996. The monthly rental for the first two years was $2,000.00. It increased thereafter to $2,500.00 per month. There were other subsequent increases, but they are not relevant as the lease came to an end during the second period. Some of the Tenant's covenants that are relevant to this case include, at clause 2:

> (a) to pay the rent reserved on or before the 5th day of each month.
>
> (b) to pay all charges for … water … supplied to the demised premises.
>
> (c) . . .
>
> (d) . . .
>
> (e) Not without the previous consent in writing of the Lessor first had and obtained to make or suffer to be made any alterations or additions to the demised premises or any part thereof …
>
> (f) . . .
>
> (g) . . .
>
> (h) to yield up the demised premises with the fixtures thereto at the termination of the term hereby granted in good tenantable repair and condition fair wear and tear excepted.

Some of the relevant Landlords' covenants were, at clause 3:

> a)… [The usual covenant for quiet enjoyment]
> b)… [The usual covenant to keep in repair]
> c) …
> d) …
> e) to pay all rates, taxes, charges, assessments and outgoings whether municipal, local or otherwise payable in respect of the demised premises except charges for … water …
> f) to provide the Lessee with water service including [sic] of a "well" on the demised premises.

The lease provided that if any part of the rent was unpaid for 28 days after becoming due the Landlords were entitled to re-enter the premises whereupon the lease would come to an end. The lease also provided at clause 4(d)

> "All furniture and equipment (including the 3-phase wiring system installed by the Lessee) shall remain the property of the Lessee and shall be removable by the Lessee on the termination of the term hereby granted the Lessee undertaking to repair any damage caused by such removal."

[5] The building that was to be rented to the Tenant needed alterations to be done to it before it could be operated as a bakery. The building had previously been used as a warehouse. There was a large gaping entrance with a steel grill, but no proper doors installed. The 2nd Plaintiff testified that he verbally agreed with the Tenant that the Tenant would install two front doors made of aluminium at an estimated cost of $12,000.00. That is why, he said, the first two years' rent was reduced from $2,500.00 to $2,000.00 per month. This was to offset the cost of the aluminium doors that were to be installed by the Tenant. The Tenant testified that the rent been agreed at $2,000.00 for the first two years. He testified that the

Landlords were short of cash to complete the renovation work they were doing on the building. The building was not ready to be rented, he testified. It was unpainted, the floor was of bare concrete, with little or no plumbing, and no electrical outlets or fittings. He claimed that it was agreed that he should supply the doors for the front, paint the walls, do the plumbing, and he would be repaid the cost by a monthly reduction of $500.00. He admitted the discussion about the aluminium doors, but he gave evidence that he purchased wooden doors instead because they were cheaper. I find that the parties agreed that the Tenant was to do work on the building and to install various fittings including electrical wiring. I am satisfied that the agreement between the parties, worked out by them over a period of several months before the lease was signed, was reduced into writing subsequent to the negotiations and is now constituted by the registered deed of lease. Much of the work claimed for by the Tenant was done by him before the lease was signed. The Tenant was entitled by the terms of the lease to take away his equipment and furniture and the 3-phase electrical wiring, as he did. The Landlords are not entitled to claim, as they do, compensation for his having done this. The Tenant is not entitled to claim, as he does, the cost of any renovations or work done on the building. If the parties had agreed that the Landlords were to pay for this, then that agreement should have been incorporated in the lease. It was not, only the electrical wiring was to be the property of the Tenant, and he was to remove it at the end of the lease. The Tenant is by the terms of the lease responsible for any cost to the Landlords of restoring the building if he does not repair any damage caused by the removal of his fittings. He testified that he could not do the final cleaning up and restoration because the Landlords went back into occupation before the period of notice had expired and before he could complete the work. I do not believe the Tenant or his witness and partner on this point. I find that the relationship had broken down to such an extent by that point, that the Tenant took out his equipment and left without doing the necessary repairs.

[6] The Tenant became unhappy with the Landlords by the latest in late in 1997. I find that this was caused by two things: the first was that during the dry years of

1996 and 1997 there was not sufficient water in the cistern. The Tenant was obliged to buy water for the bakery regularly. The Tenant claims that this was due to the spouting on the roof being defective. The Landlords claim that it was due to the drought and to the larger than usual amount of water required by a bakery, and to heat from the Tenant's oven chimney warping the spouting. I accept that the bakery required a large amount of water daily for baking and cleaning and other related needs. I am satisfied that the Landlords engaged in construction work on the top storey over the period of the lease. This involved the raising of the walls in order to create a second floor above the bakery. The galvanized iron roof was taken down at some stage, probably in 1997. A new galvanized iron roof was built when the walls to hold it had been raised to their new height. The Landlords claimed that the roof was only down for about two weeks; the Tenant claims it was down for over a year. I am satisfied that it was down from late 1997 at the latest and that it had not yet been put up when the Tenant left in November 1998. In other words, I do not believe the Landlords' version of the story of the removal of the roof. The galvanized iron roof was essential for collecting water for use in the premises. There is no public water supply in Bequia. The only water available to you is the water you collect from your roof or the water you buy from neighbours with surplus supply or from water boats from the mainland of St Vincent. The Landlords acted without concern for the needs of the bakery when they removed the roof, thus halting the collection of water for such a long period. They now rely on their lease and claim that it was the responsibility of the Tenant to pay for water. It was the responsibility of the Tenant under the lease to purchase surplus water if he used up the water normally collected on the roof of the building. It was the obligation of the Landlords to keep the spouting on the roof to supply water to the cistern for the use of the Tenant. I have no doubt that the Tenant paid many thousands of dollars for water. Some of that was to replace water lost as a result of the Landlords taking down the roof and spouting. It is a pity that he either kept no proper records of the monies he spent or failed to produce those records in court. If he had kept such records and had produced them in court he may have been able to recover the money he had spent as special damages for the

Landlords' breach of covenant, both for quiet possession, and also to provide the water collection facility. As it is, at most he will be entitled to a sum by way of general damages.

[7] One of the consequences of the Landlords removing the galvanized iron roof in order to construct the top floor was that the ground floor became liable to be flooded when it rained. The evidence of all the parties is that the Landlords built the top floor in a very peculiar way. No doubt they thought to economize. The original building had high walls, say 14 feet high, and an A frame wooden roof covered with galvanized iron. What the Landlords did, shortly before the Tenant went into occupation, was to pour a concrete slab under the galvanized iron roof, about 9 feet from the floor. Apparently, they built reinforced columns up from the floor and reinforced horizontal beams at that height of 9 feet within the existing four walls of the building. They then put up the form work and poured a 6-inch reinforced concrete slab from wall to wall supported by the beams and columns below. They then partly removed the galvanized iron roofing, and raised the original block wall by several feet and built a new roof on top of it. As previously stated, that new roof was not on by the time the Tenant left in November 1998. I have already said that a period of more than a year passed between the taking down of the old roof and the erection of the new. The evidence indicated several reasons for the delay. First, it was done on the cheap and not handled professionally. The Landlords, apparently, did not have the funds to finance their ambitious plans. Secondly, it is agreed, this was all done without permission from the planning authorities, who intervened. The planning authorities stopped the construction until their procedures had been satisfied. Construction work did not resume until some months after the stopping had occurred. During all this time, the guttering that should have been taking water from the galvanized iron roof into the cisterns below the bakery were not in place. Additionally, 1998 was an unusually rainy year in Bequia. The Disaster Preparedness Committee had to deal with flooding in various areas of the island. The removal of the galvanized iron roof meant that, whenever it rained, water collected on the new concrete slab

above the bakery. This slab was contained as previously described inside the original four walls of the building. The only way for the water that got onto the concrete roof to get out was to seep into the external walls and to drain down into the bakery below. I accept the evidence of the witnesses for the Tenant that this unsatisfactory method of construction caused the excessive rainwater to flood down their walls into the bakery, making baking impossible and resulting in serious loss of business. That is most likely one of the reasons why the Tenant stopped paying rent. It is a pity that the Tenant neither claimed as special damages the amount of lost income nor produced by way of satisfactory evidence any amount of lost income. He admitted he had accounts and records for the period in question but, though particulars had been requested he had not given them, and though he promised to produce them in court later, he then refused to do so. At most, he will be entitled to a sum by way of general damages for breach of covenant for quiet enjoyment. He will not be entitled to the amount of $25,000.00 he claimed and testified to as loss of income.

[8] The Tenant claimed and gave evidence of having paid various amounts for materials and labour paid for by him in preparing the building for use by him as a bakery. There were some $11,972.00 in materials and $9,550.00 in labour. I have earlier explained why the Tenant is not entitled to be repaid these amounts or to set them off against the rent. The lease, which embodies all the negotiations and the agreement of the parties, makes no provision for these expenses to be paid by the Landlords. These were alterations made by the Tenant for the Tenant's convenience. The Tenant was familiar with the building before the lease was signed. Much of the work was done before the lease was signed. If it were intended that the Landlords should pay these costs, then the lease would have so provided. The lease does not make any provision for the Landlords to bear this cost. I am satisfied that the Tenant is not entitled to it.

[9] The Tenant complains that the Landlords did not provide a well. But, I am satisfied that a well was provided. It is not clear why the water in the well was not

used by the Tenant. The evidence is that well water in that part of Bequia is undrinkable. If that is so, the Landlords are hardly responsible for the Tenant's inability to use the well water. If the Tenant wished to use it for cleaning, assuming it was suitable for that purpose, then there was nothing to stop the Tenant from installing the necessary pipes and pump, as he had done with the cistern, to make use of the water in the well. The Tenant complains that not only was the well not properly dug, it became filled in before the end of the tenancy. There is no satisfactory evidence that the well was not properly dug. The evidence is that during 1998, either as a result of the heavy rains or of flooding associated with the rains, the well became partially filled in. However, even during the dry years of 1996 and 1997, the Tenant made no attempt to use the water in the well. I am satisfied that the Tenant was unable to put the water in the well to any use, but this was not due to any default on the part of the Landlords.

[10] The Tenant left the premises at the end of November 1998 as a result of a Notice to Quit given in October. Months before the receipt of the Notice, the Tenant had determined to leave the premises and find alternative more suitable accommodation for the bakery. By the time the Notice arrived, the Tenant had not been paying rent for many months. He had ceased paying rent from 1 October 1997. He owed rent from 1 October 1997 to 28 February 1998 at a monthly rental of $2,000.00, to a total of $10,000.00. He owed rent from 1 March to 30 November 1998 at $2,500.00 per month, to a total of $22,500.00. The total of rent in arrears is $32,500.00. He testified that he made a payment of rent by cheque in April 1998. This was denied by the Landlords. The Tenant produced no evidence of this payment when it would have been easy for him to do so. He could have produced the cancelled cheque, or any other acceptable evidence. I do not believe he paid he rent for April. The Tenant must, however, be given credit for the "last month's rent" paid when he first went into occupation. That amount was $2,000.00. That gives a balance of the total amount of rent owing as $30,500.00. The Landlords, as previously explained, are also entitled to the cost of repairs, excluding the electrical fittings, due under the tenant's covenants in the lease. In

their Statement of Claim the Landlords claim $3,421.93 for the repairs. Of this figure, the electrical fittings amount to a total cost of $634.03. Deducting the latter amount I get a total of $2,787.90 proved by the Landlords as Special Damages due to the Landlords for repairs that the Landlords were required to do at the end of the Lease for damage caused by the Tenant and not being fair wear and tear.

[11] The court has no real guidance from the authorities submitted on what formula to apply in assessing the damages that the Landlords ought to pay to the Tenant for their various breaches of covenant. The Tenant pleaded an amount of $8,250.00 for the cost of water. His witnesses gave evidence that the cost could even have been more. Some of the water that the Tenant acquired as a result of the Landlords disconnecting the roof supply was from family and friends of the Tenant's witnesses, free of any cost. The Landlords must be taken to have known of the importance of water to a business such as a bakery. They waere reckless and inconsiderate in removing the roof in the way that they did, disrupting the water supply for several months at the very least. They were more concerned to provide the upstairs floor that they wanted. They did not care how cutting off the water inconvenienced the bakery below. I consider a sum of $5,000.00 to be a fair and reasonable award for this breach of covenant.

[12] The water seepage made it impossible for the Tenant to use the premises as a bakery. I accept the evidence that due to the way that the roof slab was constructed, and the long period of time that the galvanized iron roofing above it was removed, water poured down the walls and onto the floor in all parts of the bakery when there was rain. The water on the floor caused the tiles to become slippery. The baker was concerned about slipping on the tiles if he pushed the heavy rack of trays into the oven. Workers received electrical shocks from the fittings and metal tables. The water must have been unsightly and unhygienic. Vinlec had to turn off the electricity supply for safety reasons. The Tenant had to import bread from St Vincent in a desperate attempt to keep his customers. On many occasions, they were forced to sell the bread in the open market because

the sales outlet in the bakery was unusable. The Tenant cannot get the amount he claimed or the amount he testified to, but the conduct of the Landlords in attending to their own needs to construct an upper storey, regardless of the harm caused to the Tenant, amounted to a serious breach of the covenant for quiet possession. Loss to the Tenant must have been anticipated by the Landlords. I would award an amount of $15,000.00 to the Tenant under this head.

[13] In the result, the Landlords are entitled on their claim to the arrears of rent and the amount of repairs found above to a total of $33,287.90. The Tenant is entitled on his counterclaim to damages for breach of covenant in the amount of $20,000.00. There will be judgment for the Plaintiffs for the balance of $13,287.90.

[14] Normally in these matters, costs follow the event. In this case, both parties behaved badly, and in flagrant breach of the lease. Neither party was entirely truthful to the court in presenting evidence. The Tenant was, if anything, the more injured party in the whole affair. At the trial, the Tenant declined to produce the crucial evidence that would have proved his claim for expenses and loss of income. As a result, he lost most of his claim. In the circumstances, in exercise of the discretion given to me in awarding costs, the proper order in this case will be that each party is to bear his own costs.

I D MITCHELL, QC
High Court Judge